



Changing the world
of work for good

Flexible working

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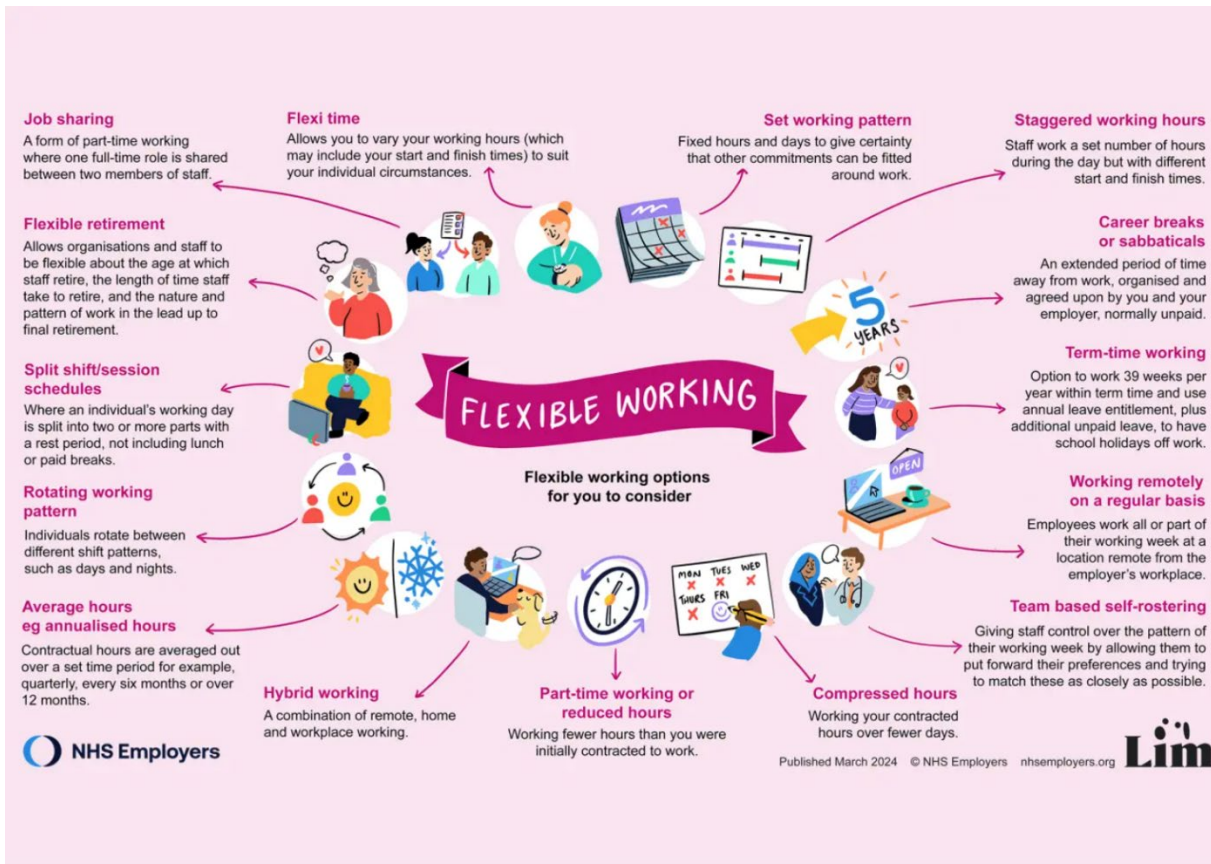
Structure for the workshop

- Welcome
- What is flexible working?
- Overview of the law
- Case studies and feedback
- Q&A (if time)

What is flexible working?

Flexible working can be any type of arrangement that gives workers some control over when, where, or how they work e.g.

- Flexi-time
- Compressed hours
- Annualised hours
- Mutually-agreed predictable shift pattern
- Term time only working
- Staggered hours
- Part time
- Job share
- Career break
- Phased retirement
- Remote working/hybrid working (hybrid can be individual or organisational)
- **Not** zero-hour contracts



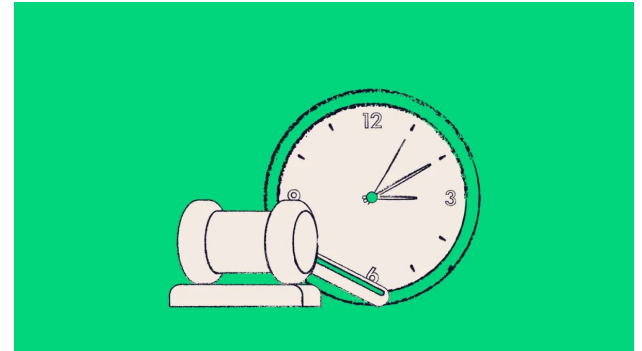
| Benefits to workers | Benefits to employers |
|--|--|
| Reduces barriers to work to parents, carers, disabled workers, older workers | Improved diversity of staff |
| Working arrangements that supports religious observance | Supports recruitment and retention |
| Support for those experiencing menopause, menstruation or pregnancy | Reduces risk of discrimination |
| Time for learning | Increased skills of staff |
| Improved work-life balance | Improved motivation |
| Greater control over working environment/time leading to improved productivity | Improved productivity/reduced absences |

Potential downsides

- Transfer costs to workers
- Push people to work longer hours in exchange for flexibility
- Increase surveillance or use of AI to monitor workers (including at home)
- Discriminate against certain groups or protected characteristics (ie force disabled workers to work from home)
- Introduce inferior 'flexible' terms and conditions such as zero hours contracts
- Impose one-sided flexibility that only suits the employer, such as closing offices completely
- Permit unfair working practices, like team meetings that exclude some staff from decision making because they're working at different times or locations.

What does the law say?

- All employees can make a request (not workers)
- Can make a request from day in the job (since April 2024)
- 2 requests every 12 months (since April 2024)
- Must make written request, state it is a statutory request, include the date, detail what change they want, start date and include the date of any previous statutory request
- Only have one 'live' request



How must employers respond?

- Employer must respond within 2 months (since April 2024), unless longer timeframe is agreed.
- 2 months includes appeal but there is no statutory right to appeal.
- Employers must handle it in a reasonable manner and must accept the request unless there is a genuine business reason not to.
- Must consult with employee unless they are accepting the request in full (since April 2024).
- Not dismiss or cause detriment to the employee because of their request.
- Usually change contract if accepted – put in writing and within 1 month.
- No legal right to be accompanied.

The right to ask nicely is
no right at all

Business reasons

1. extra costs that will damage the business
2. the work cannot be reorganised among other staff
3. people cannot be recruited to do the work
4. flexible working will affect quality
5. flexible working will affect performance
6. the business will not be able to meet customer demand
7. there's a lack of work to do during the proposed working times
8. the business is planning changes to the workforce

What is a 'live' request?

A request is live until any of the following happen:

- Employer has made a decision
- Employee has withdrawn request
- Employer and employee reach an outcome
- 2 months has passed since application
- 'Live' periods includes any appeal and if both agree to extension to 2 months

A request is considered as withdrawn if:

- Employee withdraws it
- If employee misses 2 meetings to discuss the request or appeal without good reason

Employer must tell employee they are considering the request as withdrawn.

Other laws to take account of

Discrimination law

Employers must follow Equality Act 2010 in handling the request and the decision made.

- Indirect discrimination – Indirect discrimination happens when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic, you are disadvantaged as part of this group and the employer cannot justify it. Also applies to someone without PC who experiences the same disadvantage as the person with the PC.
- Reasonable adjustments - Where a disabled person is at a substantial disadvantage compared with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage.

Activity

- In small groups talk through your case study for 10 mins and answer the three questions
- Nominate someone to feedback
- Post-its/paper on tabled if needed

Case law – not exhaustive

- British Airways PLC v Mr B Rollett and Others (EAT, August 2024, EqA should be re-interpreted to allow claims for indirect discrimination by people who did not have the protected characteristic but suffered the same disadvantage)
- Dobson v North Cumbria NHS Foundation Trust (EAT, 2023, sex discrimination was objectively justified)
- Allen vs Primark Stores (EAT, 2022, example of indirect sex discrimination, importance of correct pool)
- Mrs A Thompson v Scancrown Ltd T/a Manors (ET, 2021), indirect sex discrimination)
- Hedger v British Deaf Association (ET, 2019, constructive unfair dismissal, indirect sex discrimination and breach of the requirements for handling flexible working requests)
- Starmer v British Airways (EAT, 2005, example of indirect sex discrimination)
- Commotion Ltd v Ruddy IRLR 171 (EAT, 2006, established employer breach ERA96 if reject a request without a lawful reason)



FLEXIBLE
WORKING

Q&A – please
chip in!

TUC reps guide on flexible working

About this resource

More and more union members are seeking flexible working arrangements to help them manage caring responsibilities, transition to retirement, or simply get a better work/life balance. But the benefits aren't just for individuals - employers can see a boost to their productivity, recruitment, and diversity measures.

This interactive learning will help you negotiate a flexible working policy with your employer, and support members with their requests.



The logo consists of the letters 'TUC' in a bold, sans-serif font. Each letter is rendered with a 3D effect, appearing as if it's a white object with a purple shadow cast to its right. The 'T' has a horizontal bar on top, the 'U' is a simple U-shape, and the 'C' is a thick, rounded letter.

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